

From

to 1-703-308-9051

on 7/15/2003 1:25 PM

003/009

content, i.e. the presentation elements, is included in the segment. The other language pointed to by the Examiner from other parts of the specification only gives examples, but this definition is quite plain and consisted with the English words "presentation element;" in other words, an element of a presentation, a piece of what is actually presented to the user.

As the Examiner seems to recognize very well in the section 101 rejections, the invention relates to storage of presentation elements. Moorby – at least the parts pointed to by the Examiner – does not relate to storage of presentation elements. Moorby relates to a graphical user interface. The icons in Moorby are not actual stored presentation elements. They are only graphical representations on a screen of presentation elements that are stored elsewhere. The portions of Moorby referred to by the Examiner say nothing about how presentation elements are stored. This is not relevant art.

#### Rejection under 35 USC Section 101

The subject matter rejection is respectfully traversed. The Examiner is citing old cases about printed matter, while ignoring more recent case law. The more recent case law holds that printed matter rejections are not applicable to data structures stored in memory and readable by a computer. Please see the case of In Re Lowry, 32 USPQ 2d 1031 (Fed. Cir. 1994), which made clear that data structures of the sort claimed here are patentable subject matter under 35 USC §101.

The Examiner seems to imply that Lowry is not applicable without citing any specific language from this decision that indicates why it is not applicable. The language of the exemplary Lowry claim, 23 USPQ2d at 1033, only indicates what types of structures stored in the memory and how those structures are related. No specific function for the structure appears

to be recited. The language of the decision appears to require only that the data structures contain "information used by application programs and information regarding their physical interrelationships in a memory," 32 USPQ2d at 1034. That is exactly what is in Applicant's claims 28 et seq.

The Lowry claim does not recite a specific function to be performed by the claim elements. Instead all that is required is a functional relationship, 23 USPQ2d at 1035. When claim 28 recites that the interface program segment defines a reference timing for the play-out specification, that is a functional relationship as required by the Lowry decision. Accordingly, the claims here meet the requirements set forth in Lowry and are patentable.

If the Examiner intends to persist in this printed matter rejection, Applicant respectfully requests that the Examiner first actually read the Lowry decision and cite actual language from the decision supporting his interpretation of it.

#### Art rejections

The art rejections continue to be respectfully traversed.

The prior remarks are incorporated herein by reference. Also Applicant offers the following additional remarks.

Applicant continues to respectfully submit that the rejection fails to satisfy 37 CFR 1.104 (c) (2). The references are complex, but the Examiner does not indicate where the recited claim elements of any specific claim are to be found in the reference. Instead, the Examiner paraphrases groups of claims together, without citing any specific language from any claim and then purports to find this conglomerate paraphrase in the reference. The invention is not as the Examiner makes a conglomerate paraphrase. The invention is as claimed.

Art rejections: independent claims

The invention relates to the field of storing programming for play-out. The claims recite how a program is stored. By way of contrast, Moorby is an authoring system. It does not address how elements should be stored for the purpose of playback. It only gives a graphical user interface to allow the user to compose a program. It does not address how the program is stored for playback.

The following is largely repeated from the communication under section 116.

Independent claim 28 recites a presentation program portion stored on a computer readable medium. The portion includes a segment that includes a presentation element. A presentation element is defined at page 6, lines 8-9 of the specification, “*A presentation element is part of the presentation, like a still image or piece of text, which at any given moment is presented in the presentation.*” [emphasis added] In other words, the actual content, i.e. the presentation elements, is included in the segment.

The Examiner has pointed to figures 11 a-c and figures 12 a-b of Moorby, along with columns 11 and 12 of the same document. The text and figures pointed to by the Examiner are TimeLines. These timelines do not actually store the parts of the program. Instead, they are used to “determine the length of play of each or selected of the icons which are represented in the StoryLine.” In other words, the graphical data illustrated in these pictures controls the presentation of program portions that are stored elsewhere. The rectangular boxes 256-266 are only icons, not actual presentation elements. The Examiner has therefore failed to indicate where in the reference any presentation program portions are actually stored in a computer readable medium.

From

to 1-703-308-9051

on 7/15/2003 1:25 PM

006/009

Claim 28 further recites that the reference timing is defined independent of the presentation elements. In the TimeLines of Moorby, the length of the presentation element is determined by the physical length of the icons 256-266. Therefore, even if the Examiner thinks that these icons are presentation elements (which they are not) the timing is not stored independent of them. They determine the timing by their own lengths, i.e. by one of their own non-independent parts. Accordingly, these TimeLines fail to teach or suggest storing the reference timing independently of the presentation elements within a sub-presentation program segment.

The other independent claims, 35 and 37, contain analogous limitations to those discussed above with respect to claim 28.

The dependent claims (other than 33 and 41)

In the communication under rule 116, incorporated by reference in the RCE, Applicant asked the Examiner to indicate where the dependent claims were taught or suggested in the reference, especially claim 30. The Examiner has not done so. Applicant respectfully submits that this is improper.

Moorby in view of Gudmundson

Like Moorby, Gudmondson is an authoring system. The Examiner has failed to indicate how the Gudmondson reference relates to how program presentation elements are stored for play-out. All of the containers are merely used for composing a presentation.

From

to 1-703-308-9051

on 7/15/2003 1:25 PM

007/009

The Examiner points to Fig. 16(c) as allegedly showing containers or data structures.

This figure again shows a graphical user interface, just like the figures the Examiner pointed out in Moorby. This is not a data structure at all.

The Examiner points to column 8, lines 25-67. This is where Gudmondson summarizes the object-oriented programming scheme. Enclosed with this amendment is a definition of object-oriented programming taken from the online Internet dictionary "FOLDOC." This definition explains that objects are data structures encapsulated with routines. For instance, at col. 8, line 43, objects receive messages. These objects are used for programming/authoring content. But what are the details of the insides of these objects? The text pointed to by the Examiner does not say. It only describes them in functional terms, without reference to actual data structures.

Any other rejections or points of argument not addressed would appear to be moot in view of the foregoing. Nevertheless, Applicant reserves the right to assert further arguments with respect to those rejections at a later date.

From

to 1-703-308-9051

on 7/15/2003 1:25 PM

008/009

Applicant respectfully submits that he has answered each issue raised by the Examiner and that the application is accordingly in condition for allowance. Allowance is therefore respectfully requested.

<u>CERTIFICATE OF MAILING</u>	
I hereby certify that this correspondence is being deposited this date with the United States Postal Service as first class mail in an envelope addressed to	
Commissioner of Patents and Trademarks Washington, D.C. 20231	
On _____	(date)
By _____	(signature)

Respectfully submitted,

By A. Barschall  
Anne E. Barschall, Reg. No. 31,089  
Tel. no. 914-332-1019  
Fax no. 914-332-7719  
July 15, 2003